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PL-11
Mrs. Sorett

DECISION



**THE COMPTROLLER GENERAL
OF THE UNITED STATES**
WASHINGTON, D.C. 20548

FILE: B-195786

DATE: February 12, 1980

MATTER OF: Fermont Division of the
Dynamics Corp. of America

DIGEST:

Prompt payment discount may be applied to increase in contract price granted under price escalation clause where price is adjusted to reflect change in wholesale price indexes. Contrary holding by ASBCA applying discount only to original contract price is distinguishable as escalation in that decision was granted only to adjust an increase in direct labor costs and unlike instant case application of discount to such price increase would have been inconsistent with purpose of escalation clause.

DLG-03902

DLG-03898

DLG-03899

The Chief, Accounting and Finance Division, Office of the Comptroller, Defense Logistics Agency (DLA), requests an advance decision as to the propriety of making payment to the Fermont Division of the Dynamics Corporation of America (Fermont) for \$452.58. Fermont requests DLA reimburse it this amount on the grounds that DLA improperly computed prompt payment discounts under contract number DAAG53-76-C-0225 on the adjusted invoice price instead of on the lower original bid price. For the reasons stated below, we find Fermont is not entitled to payment of the discount.

The record discloses that under the terms of the contract Fermont offered a one-tenth of one percent discount for prompt payments by DLA and that DLA, in computing the amount of the discount, applied the discount against not only the original contract price but also against \$452,584.39 representing an amount by which the original contract price was increased under the contract's Price Escalation clause.

requires for
DLG-300

Procedures or practices
evaluations
Prompt payment
Price adjustment
Contract costs
discount

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Fermont contends DLA is prohibited from computing the prompt payment discount on the adjusted contract price. It points out that the Armed Services Board of Contract Appeals (ASBCA) decided in Jets Services, Inc., ASBCA 19070, 74-1 BCA 10649 (1974), that under a contract with a price adjustment clause a prompt payment discount should be taken on the lower original contract price rather than on the contract price as adjusted to compensate for a Department of Labor mandated wage increase made pursuant to the Service Contract Act, 41 U.S.C. § 351 (1976). DLA believes the Jets Services, Inc. decision is not dispositive of the issue because the facts in that case are not similar to the facts here. We agree with DLA.

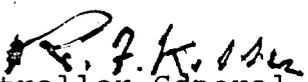
In the Jets Services, Inc. decision, the Board found that the contractor's usual procedure in constructing its bid or proposal prices was to calculate its estimated direct and indirect costs, add the desired profit, and add to the total 11.11 percent. The contractor added 11.11 percent to its prices to offset the effect of the Government's taking the offered 10 percent prompt payment discount and so leave the contractor with receipts equalling its incurred costs plus desired profit. The ASBCA then interpreted the contract's price adjustment clause by which the contractor warranted that the contract prices "do not include any allowance for any contingency to cover increased costs for which adjustment is provided under the clause * * *" and held:

"In our view the quid pro quo for the warranty made by the appellant under paragraph (a) was a guarantee that appellant would recover its direct cost increases flowing from a revised wage determination. It is clear that if the Government were permitted to take the prompt payment discount on the basis of a contract price so increased, appellant would not recover the full amount of its increased direct costs. Such a result is inconsistent with the intent of the Price Adjustment clause and would further penalize appellant for circumstances which it is not entitled to take into account when it prepared its Proposal."

In this case, the price escalation clause does not contain a warranty similar to the one that was dispositive of the holding in Jets Services, Inc., supra. Nor does this clause indicate that Fermont would not be compensated for both its increased costs and additional profit based on those increased costs. The clause provides that the original contract price shall be adjusted to reflect increases and decreases in the Wholesale Prices and Price Indexes and has the effect of keeping the unit prices--including profit--of those items listed in the contract abreast of price increases for that industry. (In contrast, DLA now uses a revised economic price adjustment clause which contains a warranty that effectively is identical to the warranty in Jets Services, Inc., supra, and which limits the amount of increase to increases in labor and material costs.)

Where, as here, a contractor is compensated not only for its increased costs but also is allowed to obtain additional profit based on those increased costs, application of the prompt payment discount against the adjusted contract price would not be inconsistent with the price adjustment clause and would therefore appear not to be inconsistent with the intention of the parties.

Fermont is not entitled to return of the discount.


Deputy Comptroller General
of the United States